



1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022

PHONE 212.999.5800

FAX 212.999.5899

www.wsgr.com

May 3, 2019

VIA CM/ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Mark Nordlicht, et al., No. 1:16-cr-00640-BMC

Dear Judge Cogan:

We represent defendant David Levy.

On Thursday afternoon, AUSA Lauren Elbert said in front of the jury, during colloquy with the Court regarding an objection to a document, that Platinum had “30,000 PPMs.” Tr. at 1499:8. I am confident that Ms. Elbert’s statement was not designed to prejudice the defense and that it was inadvertently said in front of the jury. But the reality is that the statement stands to substantially prejudice the defense as it is wildly inaccurate and suggests that Platinum was essentially a PPM mill. Accordingly, a curative instruction is necessary, and we propose the following:

On Thursday afternoon, one of the prosecutors made a comment about the number of PPMs that Platinum issued. The number she mentioned was not by any measure an accurate number, and the comment should not have been made. I instruct you that you may not consider the prosecutor’s comment in any way in your thoughts about the case or during your deliberations at the end of the case. I remind you again that the statements of the lawyers are not evidence, and as for the PPMs, those that you may consider will be the ones that are admitted in evidence at this trial.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Michael S. Sommer
Michael S. Sommer
Morris J. Fodeman

Cc: All Counsel of Record (via CM/ECF)